

Notice of Allowability

Application No.

09/602,800

Examiner

Anne Holleran

Applicant(s)

AGUS ET AL.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 4/15/2005.
2. ☒ The allowed claim(s) is/are 1,3-9 and 22-27.
3. ☒ The drawings filed on 23 June 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 11/27/2000
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20050625 and 20050627
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Jeffrey Siew
JEFFREY SIEW
SUPERVISORY PATENT EXAMINER

6/25/05

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interviews with Ginger Dreger on 6/23/2005 and 6/27/2005.

The application has been amended as follows:

In the claims:

Claim 1. A method of treating androgen independent prostate cancer in a human comprising administering to the human a therapeutically effective amount of an antibody which binds ErbB2, blocks ligand activation of an ErbB receptor [substantially] more effectively than humanized monoclonal antibody huMAb4D5-8 [(HERCEPTIN[®])] and blocks by 50% or greater binding of monoclonal antibody 2C4 (ATCC HB12697) to ErbB2.

Claim 26. The method of claim 22 wherein the antibody [fragment] is not conjugated with a cytotoxic agent.

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The following is an examiner's statement of reasons for allowance:

The rejection of the claims under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in view of the amendment to claims 5 and 23.

The rejection of the claims under 35 U.S.C. 103(a) as obvious over the prior art is withdrawn in view of applicants' arguments and amendment to limit the claimed methods to the treatment of androgen independent prostate cancer, which specific type of cancer is not taught by the prior art of record.

The provisional double patenting rejection over the claims of copending application 09/602,812 is withdrawn upon further consideration, because it appears that the claims of 09/602,812 are drawn to broad inventions that encompass the instant inventions, and as in *In re Kaplan*, 789 F.2d 1574, 229 USPQ 678 (Fed. Cir. 1986), the disclosure of the specification of 09/602,812 is required to support the provisional double patenting rejection. MPEP 804.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the Office should be directed to Anne Holleran, Ph.D. whose telephone number is (571) 272-0833. Examiner Holleran can normally be reached Monday through Friday, 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew, can be reached at (571) 272-0787.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at telephone number (703) 571-1600.

Anne L. Holleran
Patent Examiner
June 25, 2005